

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1352 of 1997

in

SPECIAL CIVIL APPLICATION No 1540 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL Sd/-

and

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DIRECTOR OF AGRICULTRE

Versus

KIRITSINH C PARMAR

Appearance:

MR RC KODEKAR, AGP for Appellants

MR IS SUPEHIA for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE A.M.KAPADIA

Date of decision: 08/03/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated June 24, 1997, rendered by the learned Single Judge, in Special Civil Application No. 1540/97, by which the appellants are directed to consider the application submitted by the respondent for compassionate appointment on the basis that the income of the respondent is less than Rs. 1500/- per month.

2. The respondent is son of deceased Chaturbhai M. Parmar, who was serving as a Junior Clerk in Agricultural Department and who expired in harness on March 4, 1991. The respondent by a letter dated October 27, 1991 requested the appellant no.1 to appoint him on compassionate ground. On receipt of the said letter, the appellant no.1 directed the respondent vide letter dated November 27, 1991 to produce certain documents in support of his case for appointment on compassionate ground. Another letter dated January 2, 1992 was also received by the respondent asking him to furnish particulars regarding holding of lands etc. in the name of his deceased father. The respondent furnished all necessary particulars and documents. Thereafter by a letter dated December 17, 1992, the respondent was asked to produce a certificate from Panchayat to the effect that he had no source of income nor was he having any property fetching any income. He was also asked to produce a certificate relating to income derived by his family by way of pension. According to the respondent, necessary certificates were despatched to the appellant no.1 and he was informed by a letter dated February 15/17, 1993 that the relevant papers were sent to the Additional Director of Agriculture, Vadodara for necessary action. However, the respondent was informed by a letter dated September 18, 1993 that his monthly income was more than what was prescribed by the Government Resolution and was, therefore, not entitled to be appointed on compassionate ground. The said letter is produced by the respondent at Annexure-E to the petition. Though the respondent addressed several letters, they were not favourably responded. Therefore, he filed Special Civil Application No. 1540/97 praying the Court to issue a writ of mandamus or any other appropriate writ or order, directing the appellants to give appointment to him on compassionate ground to the post of Junior Clerk.

3. On service of notice, reply was filed by Mr. V.K.Makwana, Administrative Officer, Office of Director of Agriculture, controverting the averments made in the petition. In the reply, it was mentioned that though the income of the family of the respondent was Rs.1,147/- per month, another amount of Rs. 1,097/- was liable to be added to the said income because the family members would have earned interest at the rate of 12% per annum on the amount received by them on the death of the deceased. According to the appellants, the total income of the family of the respondent was Rs. 2,244/-, which was more than Rs. 1500/- per month as prescribed under the Government Resolution and, therefore, the respondent was not entitled to appointment on compassionate ground. What was claimed in the reply was that the respondent was not entitled to appointment on compassionate ground contrary to the resolution passed by the Government and, therefore, the petition was liable to be dismissed.

4. The learned Single Judge has held that there was no positive evidence that the family members had invested the amount received by them on the death of the deceased government employee and were earning interest at the rate of 12% per annum on the said amount. According to the learned Single Judge, the actual income earned by way of interest from the investment of the amount received by way of death-cum-retirement gratuity, G.P.F., group insurance and other insurance, dividend income from shares and the income derived from movable and immovable properties could have been taken into consideration while determining the question whether the income of the family members exceeds Rs. 1500/- per month as stipulated in the Government Resolution. In view of the above-referred to conclusions, the learned Single Judge has allowed the petition by the impugned judgment and directed the appellants to consider the application of the respondent for compassionate appointment on the basis that the income of the family members of the respondent was less than Rs. 1500/- per month, giving rise to the present appeal.

5. Mr. R.C.Kodekar, learned Counsel for the appellants submitted that as the income of the family of the respondent is more than Rs. 1500/- per month, the respondent is not entitled to appointment on compassionate ground and, therefore, the appeal should be accepted. It was pleaded that the Government Resolution dated December 16, 1991 is misinterpreted by the learned Single Judge and, therefore, the impugned judgment should be set aside.

6. Mr. I.S.Supehia, learned Counsel for the respondent contended that the actual interest earned on the amount of death-cum-retirement gratuity, G.P.F., group insurance and other insurance, dividend income from shares and income derived from movable and immovable properties can only be taken into consideration while determining the question whether the income of the family of the respondent exceeds Rs. 1500/- per month and, therefore, the view taken by the learned Single Judge being just and proper, should be upheld.

7. We have heard the learned Counsel for the parties and taken into consideration the documents which are on the record of the petition. Earlier, it was stipulated by the Government that the income of the applicant seeking appointment on compassionate ground should not exceed Rs. 1000/- per month. However, the said limit was raised to Rs. 1500/- per month by Government Resolution dated December 16, 1991. Government Resolution dated December 16, 1991 further provides that while determining the income of the applicant, income derived by way of interest on the amount of death-cum-retirement gratuity, G.P.F. group insurance and other insurance, dividend income from shares and income derived from movable and immovable properties should be taken into consideration. A bare reading of the said resolution makes it manifest that the actual income earned by way of interest has to be taken into consideration while determining the question whether the income of the family of the respondent exceeds Rs. 1500/- per month as prescribed in Government Resolution dated December 16, 1991. It is not the case of the appellants that the amount which was received by the family members of the respondent by way of death-cum-retirement gratuity, G.P.F., group insurance and other insurance was invested by them and that they were earning interest at the rate of 12% per annum on the said amount. The word used in the Government Resolution is "earned" which necessarily would mean that interest actually earned. Hypothetical calculation of income earned is not provided in the resolution at all. If hypothetical calculation of interest is taken into account, it would amount to rewriting Government Resolution, which is not permissible to a Court of law while deciding a petition under Article 226 of the Constitution. We may mention that the Government has issued another resolution dated August 14, 1997, which is effective from January 1, 1995, whereby the income limit is increased to Rs. 2500/- per month. On overall view of the matter, it cannot be said that any error is committed by the learned Single Judge in directing the

appellants to consider the case of the respondent for appointment on compassionate ground on the basis that the income of his family is less than Rs. 1500/- per month. The learned Counsel for the appellants has failed to point out any defect in the judgment impugned so as to warrant our interference in the present appeal. The appeal, therefore, cannot be allowed and is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. There shall be no order as to costs.

Sd/- Sd/-

8.3.2000 (J.M.Panchal,J.) (A.M.Kapadia,J.)

(patel)